

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs August 15, 2007

CLYDE SMITH v. STATE OF TENNESSEE

Direct Appeal from the Circuit Court for Robertson County
No. 01-0197 John H. Gasaway, III, Judge

No. M2007-00419-CCA-R3-PC - Filed January 3, 2008

The petitioner, Clyde T. Smith, appeals the denial of his petition for post-conviction relief. He contends that trial counsel was ineffective for failing to anticipate or raise a challenge to the enhancement of his sentence as unconstitutional pursuant to Blakely v. Washington, 542 U.S. 296 (2004). We acknowledge, pursuant to Blakely; Cunningham v. California, 549 U.S. ___, 127 S. Ct. 856 (2007); and State v. Edwin Gomez II, No. M2002-01209-SC-R11-CD, 2007 Tenn. LEXIS 884, at *1 (Tenn. Oct. 9, 2007), that portions of our previous sentencing scheme have been declared unconstitutional. However, neither Blakely, Cunningham, nor Gomez II, applies to the facts of this case because the career offender statute found by the trial court was the result of prior convictions not prohibited by the cases cited above and the trial court did not enhance the petitioner's sentence based upon a finding of facts that the above cited cases hold must be found by a jury. Upon these facts, the trial court had no discretion but to impose the only sentence provided for by law, fifteen years. The judgment denying post-conviction relief is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which JERRY L. SMITH and ALAN E. GLENN, JJ., joined.

Gregory D. Smith, Clarksville, Tennessee, for the appellant, Clyde Smith.

Robert E. Cooper, Jr., Attorney General and Reporter; Elizabeth B. Marney, Senior Counsel; John Wesley Carney, Jr., District Attorney General; and Dent Morriss, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The petitioner was found guilty after a bench trial of selling less than 0.5 grams of a Schedule II controlled substance, cocaine (Class C felony). After a sentencing hearing, the trial court found that the petitioner was a career offender and sentenced him to the only available sentence, fifteen years, with a release eligibility of sixty percent. His convictions and sentence were affirmed on

appeal, and a Rule 11 application for permission to appeal was denied. See State v. Clyde Smith, No. M2002-02138-CCA-R3-CD, 2003 WL 21877666, at *1 (Tenn. Crim. App. Aug. 5, 2003), perm. to appeal denied (Tenn. Dec. 8, 2003).

Thereafter, he filed a petition for post-conviction relief, which was denied. The only issue presented in this appeal dealt with whether trial counsel was ineffective for failing to anticipate or raise an issue regarding the enhancement of the petitioner's sentence. While the petitioner's case was pending and on appeal, several important cases have been filed:

- 1) Blakely v. Washington, 542 U.S. 296 (2004);
- 2) Cunningham v. California, 549 U.S. ___, 127 S. Ct. 856 (2007); and
- 3) State v. Edwin Gomez II, No. M2002-01209-SC-R11-CD, 2007 Tenn. LEXIS 884, at *1 (Tenn. Oct. 9, 2007).

Simply, none of the above cited cases prohibit the sentence the petitioner received in this case, and the trial court's denial of post-conviction relief must be affirmed.

JOHN EVERETT WILLIAMS, JUDGE